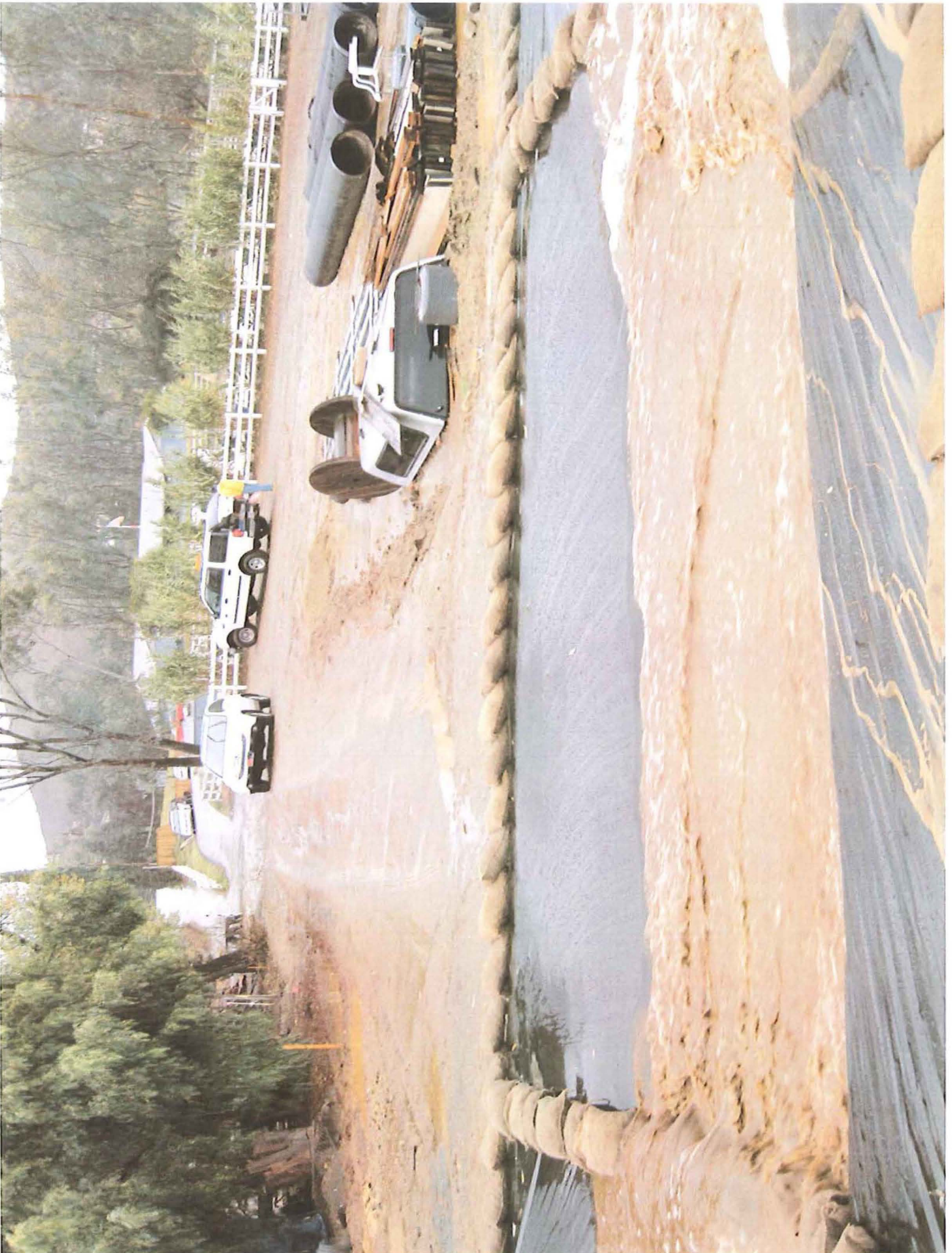




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^ 1ST COURT LINE
^ 2ND COURT LINE

^ PLAINTIFF,
Plaintiff,
vs. NO. ^ CASENUMBER
^ Defendant,
Defendants.

~~~~~

DEPOSITION OF  
DAVID RIZZUTO

January 22, 2009  
9:03 a.m.

13325 Civic Center Drive  
Poway, California

Diane M. Stockton, CSR No. 11085



1 APPEARANCES OF COUNSEL

2

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12

13 Also present:

14 Bill Moritz

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DEPOSITION OF DAVID RIZZUTO

January 22, 2009

DAVID RIZZUTO,

having been first duly sworn, testifies as follows:

EXAMINATION

BY MR. SIMPSON:

Q. Sir, will you tell us your name, please, and spell your last name for the record.

A. Certainly. My name is David Alan Rizzuto, R-i-z-z-u-t-o.

Q. Sir, as you know, you've been sworn in and that means that the penalty of perjury applies to the testimony you're giving today. Do you understand that?

A. Yes, I do.

Q. The testimony you're giving has the same force and effect as if you're testify before a judge and jury. Do you understand?

A. I do.

Q. For that reason we want to have the best testimony that you can give us today. Can you do that for us?

A. Yes, I can.

Q. Any reason we can't have your best testimony?

A. No.



1 Q. Fair enough. When we're done here we'll have a  
2 transcript prepared that contains everything that's been  
3 said on the record, and you'll have an opportunity to  
4 review the transcript. It will read like a play with a  
5 question and answer, and you can make changes to your  
6 answers, but we have to caution you that if you make  
7 changes to the answers in a substantive way, "yes" to a  
8 "no," "no" to a "yes," we could comment on that and that  
9 could affect your credibility or the city of Poway's, as  
10 well. Do you understand that?

11 A. Certainly.

12 Q. As you've been doing, we need to have oral  
13 responses obviously those that we can hear other than head  
14 nods and gestures, that kind of thing. Okay?

15 A. Yes.

16 Q. Likewise, "huh-uhs" and "uh-huhs" don't  
17 transcribe well, so that we don't cause Diane trouble we  
18 need to make sure we say somebody intelligible. Okay?

19 A. Okay.

20 Q. As we've been doing, we need to wait for one  
21 another to finish what the other is saying so that we  
22 don't talk over each other. All right?

23 A. Correct.

24 Q. If you need a break at any point, let me know,  
25 and we'll do that.



1 A. That's fine.

2 Q. From time to time we may have objections from  
3 counsel, but I'm entitled to the answers if you understand  
4 the question. Okay.

5 A. Yes.

6 Q. And that's unless you are instructed not to  
7 answer. All right?

8 A. Of course.

9 Q. Sir, are you currently employed?

10 A. Yes, I am.

11 Q. Where are you currently employed?

12 A. The city of Poway.

13 Q. How long have you been there?

14 A. I've been with the city of Poway since June 5th  
15 of 2001.

16 Q. What is your position currently?

17 A. Currently my position is engineering inspector.

18 Q. How long have you been an engineering inspector?

19 A. Since February of 2003.

20 Q. Have your job duties remained the same since  
21 February 2003?

22 A. Yes, they have.

23 Q. Currently do you supervise anybody?

24 A. No.

25 Q. Does anybody supervise you?

1 A. Yes.

2 Q. And who is that?

3 A. My supervisor is Danis Bechter.

4 Q. And who is Danis Bechter's supervisor?

5 A. That would be Frank Casteleneto.

6 Q. And Frank Casteleneto's supervisor is who?

7 A. Would be the director of our department, Bob  
8 Manis.

9 Q. Sir, currently what are your job  
10 responsibilities?

11 A. My job responsibilities day-to-day involve the  
12 supervision of the construction activity associated with  
13 private and public improvements, everything from site  
14 grading to infrastructure associated with civil  
15 engineering, water, sewer, storm drain, street lights,  
16 paving, traffic signal modifications.

17 Q. Is part of your job the enforcement of ordinances  
18 of the city of Poway?

19 A. Yes.

20 Q. Does that include grading ordinances?

21 A. Yes, it includes an understanding of the grading  
22 ordinances and enforcing them.

23 Q. How many persons have the position that you hold  
24 within the city of Poway?

25 A. Currently there are two others besides myself.



1 Q. And who are the other two?

2 A. Chuck Littlejohn and John Tolliver.

3 Q. How do you guys divide up responsibility, if you  
4 do?

5 A. Typically, it's based on workload, and probably  
6 more specifically we get into areas. So I am -- you know,  
7 to explain that, I'm signed to the what's considered the  
8 north end of town.

9 Q. The area to which you're assigned, is that  
10 something that includes the Moritz product at 14272 Jerome  
11 Drive?

12 A. I do have an existing project on Jerome Drive. I  
13 wouldn't say that I am assigned to Dr. Moritz' project.

14 Q. Does your geographic area include that particular  
15 piece of property?

16 A. Typically it would, yes. I am responsible for  
17 areas north of Twin Peaks Road.

18 Q. Typically, what triggers your involvement as to  
19 any typical site? Is it the existence of a permit or is  
20 it wandering around and looking for code violations?

21 A. No. My job does involve permitted projects.  
22 Again, whether that's a private development or a -- as we  
23 call them, capital improvement project of a publicly-  
24 funded construction project. My involvement usually  
25 begins with the assignment of a permit to me and then

1 conducting preconstruction meetings prior to any grading  
2 activity commencing.

3 And to answer the other part of your question, I  
4 believe, is that my involvement in the enforcement of the  
5 grading ordinance as it applies to potentially permits  
6 without -- sites without permits is based on calls from  
7 citizens or calls received by supervisors who direct me to  
8 explore whether or not there's illegal grading activity at  
9 a site.

10 Q. How about times when you have a site without a  
11 permit as to which you've had no calls from citizens, are  
12 there circumstances in which you exercise enforcement  
13 authority of the city of Poway in that kind of a  
14 situation?

15 A. I'm trying to think of an example, and I would  
16 say no. No.

17 Q. What was your job between the time that you were  
18 hired and February 2003?

19 A. I was -- my specific title was engineering  
20 technician.

21 Q. Where did you work before June 5, 2001?

22 A. Before that I worked for two firms, South Coast  
23 Civil Engineering and Slater Land Survey. They shared an  
24 office space, so when I say I worked for both.

25 Q. What did you do before those jobs?



1           A.    Before that I resided in Buffalo, New York, and I  
2   was a cook.

3           Q.    Do you have any college degrees?

4           A.    No.

5           Q.    Any college education?

6           A.    I attended the University of Buffalo at New York  
7   from the fall of 1988 through the spring of 1991.

8           Q.    Any major course of study while you were there?

9           A.    It was performance arts.

10          Q.    Sir, when did you first go to the property that's  
11   involved in this case, 14272 Jerome Drive, Poway?

12          A.    If I -- I couldn't put a specific date on it, but  
13   my recollection is it was probably in January of 2008.

14          Q.    Why did you go out there?

15          A.    There was a gentleman who came in, I don't know  
16   his name. He claimed to be a resident of Jerome Drive.  
17   He expressed concern that there were trucks running up and  
18   down the street that contained dirt, and he gave me a  
19   general location of where the dirt was being brought to at  
20   the end of Jerome Drive and wanted me to determine if --  
21   well, if I can speak for somebody who I don't really know,  
22   his concern was the volume of trucks going up and down a  
23   privately maintained road and whether or not that had an  
24   impact on the maintenance of the road, the citizens who  
25   contribute to the maintenance of that road.

1           My involvement from that point, though, was to  
2     determine whether or not this was a potential grading  
3     violation based on the concerns he had raised.

4           Q.     Who was that person? Sean Marsden?

5           A.     I can say no, it was not Sean Marsden, unless  
6     he's a 70-year-old-plus gentleman, but I don't think he  
7     is. I really don't know the name of the man who came in.

8           Q.     What did you do next?

9           A.     I went out to the site within the -- it was  
10    within the hour, and when I arrived to the site, it was  
11    Dr. Moritz' site where the trucks were -- in this case a  
12    truck was dropping off dirt. I observed that Dr. Moritz  
13    was using a small backhoe skiploader to spread the dirt  
14    around on his site.

15           I spoke with Dr. Moritz at that time. I asked  
16    what his intentions were. We discussed the provisions of  
17    the grading ordinance for what is considered routine  
18    landscaping work, work that would not require a permit.  
19    Because I only observed one truckload of dirt and no  
20    subsequent trucks running, I couldn't tell you how much  
21    dirt had been brought into the site at that point, whether  
22    it exceeded or did not exceed the limitations of the  
23    landscape ordinance, which is what we specifically had  
24    talked about. The area that was being graded -- I say  
25    graded -- landscaped, was to the northwest of the horse



1 corrals. I did observe that some vegetation maybe had  
2 been removed from the site. It looked like it had been  
3 stripped bare, but then again, that could have been a  
4 result of the fires, I honestly don't know, and that,  
5 again, an undetermined amount of dirt had already been  
6 spread out in this area.

7 My -- my assessment at that time was that it was  
8 not a grading violation, but in speaking with Dr. Moritz I  
9 cautioned him against bringing in too much dirt, of  
10 creating vertical fills, you know, exceeding the height  
11 limitations within the landscape ordinance that is part of  
12 the grading ordinance, and I left the site.

13 Q. What is your understanding of the limitations of  
14 the grading ordinances?

15 A. Specifically in the grading ordinance, I couldn't  
16 give you the actual section. It's J is the alpha  
17 assignment to it, Section J of whatever part of the  
18 grading ordinance, but specifically that says you shall  
19 not import more than 250 cubic yards -- when I say  
20 "import," let me correct myself -- import or utilize  
21 onsite materials exceeding 250 yards. You shall not  
22 create vertical fills greater than five feet in height at  
23 a 3:1 slope, and you shall not create any vertical cuts or  
24 fills greater than a foot in depth. And then probably  
25 most significantly is that the areas being landscaped, the

1 intent is that there will never be a structure, permitted  
2 structure, built on them or something that would require a  
3 building permit, habitable space.

4 Q. Because of compaction issues?

5 A. Certainly.

6 Q. Any other distinctions between what's permissible  
7 landscaping and what's grading?

8 A. Possibly the clearing of vegetation could come  
9 into that, but, again, I didn't have the benefit of  
10 knowing what that site looked like before the day I went  
11 out there. So, again, my observation was that there was  
12 fresh disturbance of soil, but what had been there before,  
13 I couldn't tell you. So when I say that stripping or  
14 clearing of vegetation can become an issue, that gets into  
15 whether or not there's habitat out there that shouldn't be  
16 removed or trees that are protected by our ordinances.

17 Q. Did Bill Moritz tell you that he had already been  
18 to the city of Poway asking whether a permit was required  
19 for the work that he envisioned?

20 A. I believe --

21 MS. FOSTER: Objection. I'm sorry. That calls  
22 for hearsay.

23 You can answer.

24 THE WITNESS: Okay. That I believe was  
25 discussed, that he said he had been in contact with the



1 city at that point.

2 BY MR. SIMPSON:

3 Q. He told you that he'd actually been down to the  
4 city?

5 A. I couldn't tell you his exact phrasing of it, but  
6 that he expressed an understanding of the limitations of  
7 the ordinance at it applied to the work he was doing.

8 Q. Did you issue any stop work notice or citation?

9 A. I did not.

10 Q. Why is that?

11 A. Again, because my opinion of the work that was  
12 ongoing at that time was that it did not exceed the  
13 criteria of the provisions for landscaping.

14 Q. You indicated in earlier testimony that the area  
15 at which you observed the grading was to the northwest of  
16 the corral. Do you recall that?

17 A. That's correct.

18 Q. I'm going to show you what's been previously  
19 marked as Exhibit 75.

20 A. Okay.

21 Q. Can you describe in reference to any of the  
22 structures that you see on Exhibit 75 where it was that  
23 you observed the activities that you've described?

24 A. Would you like me to mark it or just point or --

25 Q. Well, you can just point or describe in words

1 where it was.

2 A. I would say he was working in this area right  
3 here.

4 Q. Okay. So --

5 A. Again, west of the corral and a little bit to the  
6 north of it.

7 Q. So between the Moritz horse corral and the Moritz  
8 swimming pool?

9 A. Yes.

10 Q. A little bit to the north of the swimming pool?

11 A. Yes.

12 Q. And a little bit to the south of the swimming  
13 pool?

14 A. Yes. And this -- this area in question here was  
15 possibly cleared, but he was not working over there.

16 Q. And you're referring to the area to the north of  
17 the plastic creek?

18 A. I am, and the reason I am specifying this area is  
19 because of the location of this tree. I do remember this  
20 tree kind of standing out as being alone and kind of  
21 isolated from any other trees around it and that this area  
22 was cleared of any vegetation.

23 Q. Do you know which is the Moritz property?

24 A. I honestly don't. I don't know the limits of his  
25 property.



1           Q.    The tree that you just described is on the square  
2   patch that's to the north of the plastic creek; is that  
3   right?

4           A.    That is correct.

5           Q.    Did you observe the landscaping contour grading  
6   activity that you've described going on on that property  
7   at that time?

8           A.    I did not.

9           Q.    How about stockpiling of soils?

10          A.    No.  Again, the only stockpiled material was  
11   maybe the eight to 10 cubic yards that had been dropped  
12   off by the truck that I witnessed onsite at that time.

13                I would say that when I met with Dr. Moritz, at  
14   that point he was on his piece of equipment somewhere to  
15   the east of -- if this is a pool -- I'm guessing that's a  
16   pool -- to the east of the pool.

17          Q.    Where was the stockpile of dumped soil that you  
18   saw?

19          A.    By the entrance.  There's an opening in the fence  
20   down here, and it would have been dropped off somewhere  
21   between where he was on the piece of equipment and over in  
22   here.

23          Q.    So the fence opening is on the -- whatever -- the  
24   eastern end of Jerome on the northern side?

25          A.    That's correct.

1 MS. FOSTER: Maybe if you turn it that way, it  
2 makes more sense.

3 THE WITNESS: Yeah.

4 BY MR. SIMPSON:

5 Q. Where -- how did you get to the site?

6 A. City vehicle.

7 Q. Down Jerome or down Crocker?

8 A. Down Jerome.

9 Q. Did you alert the Moritzes that you were coming  
10 out to the site?

11 A. Prior to arriving, no.

12 Q. Did you get permission from the gentleman that  
13 complained to come onto Jerome Drive?

14 A. No, I did not.

15 Q. Did you get permission from anybody that owns the  
16 properties alongside of Jerome Drive to go down Jerome  
17 Drive?

18 A. No, I did not.

19 Q. Are you aware of whether that's a private drive?

20 A. I believe it's a private road, yes.

21 Q. Have you ever had any training from the city of  
22 Poway about the circumstances that require the city to  
23 obtain an inspection warrant before entering onto  
24 somebody's property?

25 A. No, I have not.

1 Q. Do you know whether that training has ever been  
2 afforded to anybody within the city of Poway?

3 A. I do not.

4 Q. It's not been afforded to anybody since you've  
5 been here, to your knowledge?

6 A. Not to my knowledge, no.

7 Q. Are the people that you've described earlier, the  
8 other two enforcement officers, they people that have been  
9 here since the time you've been here, roughly 2001?

10 A. You mean prior to that or -- well, I could give  
11 you -- Chuck Littlejohn probably joined staff sometime in  
12 2004, and John Tolliver has been with us for a month now.

13 Q. Was there -- is that a new position or was there  
14 somebody that preceded Mr. Tolliver?

15 A. There was a contract inspector that the city  
16 hired.

17 Q. And who was that?

18 A. Tom Ramirez.

19 Q. How close were you to the stockpile of soils that  
20 you saw that day on the Moritz property?

21 A. It's quite possible I was right next to it in my  
22 city vehicle. I believe I actually drove my vehicle  
23 through the opening on the -- the fence onto the property  
24 to speak with Mr. Moritz, Dr. Moritz.

25 Q. Did you notice any smell or any -- have any



1 concern about the -- whether the soil was clean fill?

2 A. No, not that I recall.

3 Q. Looked like dirt?

4 A. Looked like dirt.

5 Q. Did you see other pieces of earth-moving  
6 equipment anywhere in sight other than the one piece that  
7 you described?

8 A. I don't recall, no.

9 Q. Did you see anybody else moving soils anywhere on  
10 the site other than Bill Moritz?

11 A. No.

12 Q. Did you tell him that it was okay to proceed as  
13 long as he stayed within the confines of the grading  
14 ordinance as you described it?

15 A. As it applies to landscaping, yes.

16 Q. And when you say "as it applies to landscaping,"  
17 what do you mean by that?

18 A. To not exceed the provisions that I described  
19 earlier, you know, not to import more than 250 cubic  
20 yards, to create vertical fills and cuts greater than five  
21 feet in height, 3:1. Information that he relayed to me in  
22 saying that he'd discussed this with city staff prior to  
23 this work beginning, that he understood. I believe I may  
24 have advised him that he might want to obtain a haul route  
25 permit just in the interest of neighbors expressing

1 concern over the activity, that it would benefit him to  
2 have an import permit.

3 Q. At some point after you left the site, did you  
4 have a conversation with Don Sharp about this site?

5 A. I don't recall.

6 Q. Did you have a conversation with anybody within  
7 the city of Poway about this site?

8 MS. FOSTER: I'm going to object that it calls  
9 for hearsay.

10 You can answer.

11 BY MR. SIMPSON:

12 Q. Other than counsel.

13 MS. FOSTER: Sorry.

14 THE WITNESS: I would say that if were not Don it  
15 would have been Danis Bechter that I notified that I'd  
16 been -- you know, that a citizen had come in, described  
17 what was going on, that I went to the site and my  
18 determination was that the activity was not exceeding any  
19 limitations that would require the individual to get a  
20 permit.

21 BY MR. SIMPSON:

22 Q. And what did Danis Bechter say?

23 A. Again, whoever I may have discussed this with at  
24 the time, whether it was Don or Danis, I don't know. I  
25 was probably just asked to just keep an eye on the

1 activity.

2 Q. Are you aware there's been an issue raised about  
3 an ephemeral stream on the Moritz' property?

4 A. I am aware of that issue, yes.

5 Q. Is that something that you observed on the day  
6 that you were out there?

7 A. No. The time that I was out there that we're  
8 discussing, there was no activity in the stream area as  
9 it's been described to me, you know. Again, if I can use  
10 the --

11 Q. Exhibit 75?

12 A. -- Exhibit 75, that, to me, my understanding, is  
13 an area down in here.

14 Q. And you're referring to the southeasterly corner  
15 of the Moritz property?

16 A. That is correct. That is correct. And at that  
17 time there was no work taking place over there.

18 Q. What did the property look like over there?

19 A. Wet, exposed mud and dirt. That's probably a  
20 result of being in the middle of the rainy season and, I  
21 was guessing from soil colors, existing native materials,  
22 you know, materials native to the site.

23 Q. Did you observe scours in that location?

24 A. I don't recall.

25 Q. How about vegetation in that location?



1           A.    Minimal.

2           Q.    How about siltation or sediment from other  
3 up-gradient sources?

4           A.    I would say no.  And I say that because when I  
5 arrived and assessed the site, there was nothing striking  
6 about this area at that time.  You know, my attention  
7 wasn't called to it, oh my God, look at all the dirt  
8 that's been placed over here or look at all the silt  
9 accumulating and runoff.

10          Q.    How about to the north of where you previously  
11 observed the stockpile, did you look up to the north to  
12 see whether there was any ephemeral stream or water  
13 running onto the property from the north?

14          A.    I did not.

15          Q.    You didn't look or you didn't notice any water?

16          A.    Neither.

17          Q.    How many times have you been out to the Moritz  
18 property?

19          A.    Two other occasions.

20          Q.    When were the other times?

21          A.    The other time would have been with Don Sharp in  
22 the beginning of February when there was a stop work  
23 notice issued.  I believe on that occasion a call came to  
24 Don about the site or -- I'm not sure.  I can't speculate  
25 how he got the information that work had resumed out here,

1     that there was activity that someone was concerned about.  
2     And on that occasion I just happened to drive Don to the  
3     site in my city vehicle.

4           Q.    Do you know where the call came from?

5           A.    I don't.

6           Q.    Do you guys keep records of that, like dispatch  
7     reports or other kinds of records?

8           A.    Probably not, no.

9           Q.    Do you know whether that person is a property  
10    owner of property on either side of Jerome Drive or on  
11    Crocker Drive?

12          A.    I do not.

13          Q.    Did you guys have an inspection warrant to come  
14    out that second time?

15          A.    No.

16          Q.    Did you have the permission of Bill or Lori  
17    Moritz to come out to their property that time?

18          A.    No.

19          Q.    What did you guys do when you got to the site?

20          A.    On this particular occasion, I recall that we did  
21    not actually enter the property. We parked at, you know,  
22    in the cul-de-sac at the end of Jerome.

23          Q.    North side or south side?

24          A.    Closer to the north side.

25          Q.    Do you know whether that is Bill Moritz'

1 property?

2 A. I do not.

3 Q. Then what did you do?

4 A. On this occasion, again, I happened to be just  
5 driving Don. Don spoke with Dr. Moritz. My recollection  
6 of the conversation they had -- which I don't even recall  
7 if it was outside of the truck or, you know, through the  
8 window of the truck -- I remember for myself that I don't  
9 think I even exited the truck -- was that there were  
10 concerns that the -- again, I think there may have been  
11 calls that dirt was being moved into the site again and  
12 that Don expressed concern to Dr. Moritz that at this  
13 point he may have exceeded the limitations of the amount  
14 of dirt he could bring into the site for landscaping  
15 purposes and -- and he was advised to contact engineering  
16 staff at the city to further discuss what his intentions  
17 were with the work he was doing, and he was issued a stop  
18 work notice.

19 Q. Did Don tell you that that was the first time  
20 that he had come to the property?

21 A. He did not tell me that.

22 Q. Do you know one way or the other whether that was  
23 his first time at the site?

24 A. I do not know if that was his first time. I'm  
25 speculating that it was.



1 Q. I'm going to show you what's been previously  
2 marked as Exhibit 55. Do you see that in front of you?

3 A. Yes.

4 Q. Is that the stop work notice that was issued on  
5 the date that you've just described where you went out  
6 with Don Sharp to the site?

7 A. Based on the date here, I'm guessing yes, this is  
8 the one we're talking about.

9 Q. That's your best estimate?

10 A. Yes, based on the time frame.

11 Q. Whose handwriting is on that document?

12 A. That is Don Sharp's.

13 Q. I'm going to show you a bad photocopy, which is  
14 Exhibit 56, which is the next day. Is there any way for  
15 you to determine whether you were there on one day or the  
16 other by any of the notes that are on there?

17 A. Yes, actually, I believe I could, and I say this  
18 because my recollection is that Don requested that  
19 Dr. Moritz speak with engineering staff, and on this one  
20 Sam Tadros is, you know, described as contacting Sam  
21 Tadros with questions and concerns as opposed to this one  
22 which mentions Jim Lyon. And, like I say, my recollection  
23 is that this might be a grading violation, contact  
24 engineering staff, not planning staff, which is who Jim  
25 Lyon works with.

1 Q. So if I can put that in context with reference to  
2 the documents, you believe that you were there on the 7th  
3 of February with Don Sharp based on the context of what's  
4 written on Exhibit 55 mentioning the need to contact Sam  
5 Tadros?

6 A. With some certainty, yes.

7 Q. Whereas you don't believe it was -- based on the  
8 context of Exhibit 56, you weren't there the following day  
9 on the 8th of February when it was mentioned that Mr.  
10 Moritz ought to contact Jim Lyon; right?

11 A. No. Yeah, I was not here on this occasion.

12 Q. Okay. Do you recall -- strike that.

13 Did the -- did Don Sharp actually hand Bill  
14 Moritz a stop work notice when you were out there, or are  
15 you just guessing that were you out there based on the  
16 context of Exhibit 55?

17 A. No. I recall -- again, I recall one specific  
18 occasion of driving out there with Don that very closely  
19 preceded my initial visit and conversation with  
20 Dr. Moritz. To answer what I think your question, I do  
21 not recall if this was actually given to Dr. Moritz in my  
22 presence, though.

23 Q. So you might have been there at a different time?

24 A. No. I believe I was there when he was told to  
25 stop, but I couldn't tell you specifically if this was

1 handed to Dr. Moritz on that occasion.

2 Q. Do you have a practice of -- as an inspection  
3 officer of writing down what other city of Poway people  
4 are present during such inspections?

5 A. On a document like this -- well, no -- yes, I do  
6 personally. I do personally, yes.

7 Q. You mentioned the word "preceded." Were you out  
8 at the site by yourself before the issuance of stop work  
9 notice Exhibit 55?

10 A. Only the time as described, sometime at the end  
11 of January.

12 Q. When you were out there the second time you were  
13 out there, did you observe any trucks?

14 A. On that occasion, no, I do not recall any trucks.

15 Q. How about --

16 A. I do -- from reading this, I do remember there  
17 was evidence of trucks running, you know, with dirt on the  
18 road.

19 Q. That was one of the next questions.

20 A. Okay.

21 Q. Did you have evidence of trucks on the property  
22 such as tire ruts or stockpiles of soil?

23 A. I don't recall.

24 Q. How about as to the property to the north of the  
25 Moritz' property as shown on Exhibit 75 where the plastic



1 creek ends, do you see any evidence of any trucks having  
2 dumped loads of soil on that piece of property?

3 A. I don't recall.

4 Q. Did you have any estimate of the number of trucks  
5 that had dumped loads of soil on the Moritz property?

6 A. With this visit or with my previous visit?

7 Q. Well, let's take them both then. On your first  
8 visit, did you have any evidence that there was any more  
9 than the one truck that had dumped soil?

10 A. There was -- yes. There was freshly tracked soil  
11 that was a different color than what would typically be  
12 your native materials out there. As to an amount, no, I  
13 couldn't tell you, because all there was was one standing  
14 pile from the truck that had arrived just as I got there.

15 Q. Based on your experience, were you able to tell  
16 or to make any estimate as to the number of loads that it  
17 would have taken or that it actually did take to spread  
18 the soils that you described?

19 A. My recollection from that visit is I felt  
20 comfortable that Dr. Moritz had not exceeded the 250 cubic  
21 yards at that point.

22 Q. As far as the second time is concerned, do you  
23 have an estimate as to how many loads of soil had been  
24 deposited on the property as of that time?

25 A. I really don't recall, no.

1           Q.    How about any estimate as to the cubic yardage of  
2   soil that had been deposited on the soil as of that time?

3           A.    Personally, no, I couldn't make that assessment.

4           Q.    Did you have any report from anybody about the  
5   number of loads of soil that had gone down Jerome Drive as  
6   of that point?

7           A.    Returning to the initial complaint that was  
8   received, again, by this gentleman whose name I don't  
9   know, only to be described as an elderly gentleman, he  
10   described it as trucks continually running up and down  
11   Jerome Drive with dirt. That is -- what that means, I  
12   don't know, I couldn't speculate.

13          Q.    The second time that you were out at the site,  
14   did you make any determination as to whether the vertical  
15   elevation had changed by more than the amount of the  
16   grading ordinance that permits some activity to occur on a  
17   site without a permit?

18          A.    My observation was -- again, this is from  
19   recollection. My observation was that more dirt than what  
20   was observed on my initial visit had been placed as you  
21   come into the opening on the fence. It was spread out  
22   probably the width of the piece of equipment that was  
23   being used, which was the same as the first time, a small  
24   backhoe or skiploader, and that, yes, it was probably  
25   greater than a foot in height or change from the original

1 elevations out there.

2 Q. Less than two feet?

3 A. Possibly.

4 Q. Do you know one way or another?

5 A. No.

6 Q. How about in the ephemeral stream area, did you  
7 look in that area the second visit?

8 A. I did not.

9 Q. Did you make any determination whether any soil  
10 had been moved into the stream area?

11 A. I did not.

12 Q. What is a stream area?

13 A. Well, there's different definitions of "stream  
14 area." Obviously, you have streams that run yearlong with  
15 a constant flow of water. You have ephemeral which are  
16 based -- which are wet when it rains, and you have water  
17 that accumulates in them and runs to the natural path of  
18 drainage.

19 With respect to Dr. Moritz' property, I don't  
20 have any knowledge or opinion to offer whether or not this  
21 is a property that contains an ephemeral stream or not.

22 Q. Who within the city of Poway makes those  
23 determinations?

24 A. I would say that is done probably at a level of a  
25 senior planner or city planner.

1 Q. Such as Jim Lyon?

2 A. Correct.

3 Q. How about Danis Bechter?

4 A. Might have an opinion on that, yes, based on  
5 visual observation. But I think, to clarify, there is --  
6 there are maps that show locations of stream areas,  
7 watersheds, that can't always be concluded from by a  
8 visual observation. You know, something that's dry  
9 11 months and 15 days out of the year looks very different  
10 when it's raining.

11 Q. When a person wants to get a grading ordinance --  
12 strike that.

13 When a person wants to get a grading permit  
14 within the city of Poway, how do they go about that  
15 typically?

16 A. The initial phase of that would be called a minor  
17 development review in which an applicant would --  
18 actually, let me strike that because minor development  
19 review implies that you're going to have a structure  
20 built.

21 For somebody who wanted to grade an area, whether  
22 there's a structure there or not, so let's just remove the  
23 structure, so I don't get into building construction at  
24 all. So if a person just wanted to grade an area that  
25 they knew was going to be in excess of the 250 cubic yards

1 and they're going to create vertical fills 20 feet in  
2 height and it's a pad that might be developed in the  
3 future or not, any situation like that, they want an extra  
4 driveway turnaround on their property, things like that,  
5 they would come in, contact engineering staff with  
6 specific questions, I guess, determine if it's feasible,  
7 and if they haven't already hired a civil engineer to  
8 prepare the plans for them, that would probably be the  
9 next step, is getting a civil engineer to prepare grading  
10 plans along with any hydrology studies that will indicate  
11 how the site will be contained from runoff or not  
12 impacting adjacent properties. That permit would be  
13 submitted for review and approval, and depending on the  
14 quality of the engineer citizens retained, it can  
15 sometimes be a one- or two-plan check turnaround and  
16 others not so great, and so.

17 Q. Does the city of Poway ever have circumstances in  
18 which people come into the city asking whether they need  
19 to have a permit where the city says no, you don't?

20 A. I'm sure they do.

21 Q. Are there any -- is there a practice within the  
22 city of Poway to give such persons some type of note or  
23 writing that says indeed you do not need a permit for that  
24 kind of activity?

25 A. No.



1 Q. So it's just oral?

2 A. Yes.

3 Q. Do you know whether -- do you know who worked the  
4 desk where such kinds of things occurred as of February  
5 2008 time frame and January 2008 time frame for people  
6 looking for grading permits?

7 A. Working the counter downstairs, you probably  
8 would have had Sam Tadros, of course, who at the time was  
9 the interim senior engineer. You would have had Sam  
10 Arabzadeh.

11 Can't help you on the spelling with that. I'm  
12 sorry.

13 Q. Is he a Persian-looking male?

14 A. Yes, I believe he is Persian.

15 Q. Thin --

16 A. And possibly Mark Westover was still employed by  
17 the city at this time. I can't recall.

18 Q. The Persian man whose name I can't pronounce  
19 again --

20 A. Arabzadeh.

21 Q. Arabzadeh, is he a thin man?

22 A. Yes.

23 Q. Was there a time after the Witch Creek fires that  
24 the city of Poway relaxed or suspended its grading and  
25 erosion control ordinances?

1           A.    I -- I can't answer to whether or not they  
2   relaxed their grading ordinance and requirements.  I would  
3   say from my end, what I experience on a day-to-day basis  
4   since the Witch Creek fires, that storm water issues, if  
5   anything, have been enforced with even more concern for  
6   runoff and siltation and discharge to the storm drain  
7   system or adjacent properties.

8           Q.    Since what date?

9           A.    Since the Witch Creek fire.

10          Q.    So there's been more rigorous enforcement rather  
11   than less; right?

12          A.    I would say the effort has been more  
13   concentrated, yes.

14          Q.    Was there ever a time when there was actually  
15   less rigorous effort to enforce those ordinances because  
16   of the Witch Creek fires?

17          A.    Not to my experience, no.

18          Q.    Did you ever hear about any governmental or  
19   gubernatorial order to relax such storm water orders?

20          A.    No. I'm just hoping I don't get an IOU from my  
21   tax return this year.

22          Q.    You and me both.

23                   Did you observe any burned-out vegetation when  
24   you were out at the Moritz property?

25          A.    No.

1 Q. Did you look around to observe any fire damage?

2 A. Honestly, no.

3 Q. Did you talk with Bill Moritz about his belief  
4 that he needed a fire road or fire access because of the  
5 Witch Creek fires?

6 A. That very well may have been part of our  
7 conversation on my initial visit, yes.

8 Q. What did he say about that?

9 MS. FOSTER: Calls for hearsay.

10 You can answer.

11 THE WITNESS: I think -- he had mentioned that he  
12 and a neighbor had stayed behind during the Witch Creek  
13 Fire to protect their properties, that as a result of that  
14 he felt it was necessary to provide a buffer between his  
15 property for any potential future fire, to eliminate some  
16 of the vegetation that was there that was, you know,  
17 flammable.

18 BY MR. SIMPSON:

19 Q. The second time you were out at the property, did  
20 you ever see Don Sharp touch or push Bill Moritz?

21 A. No, I did not.

22 Q. How would you describe the demeanor of Bill  
23 Moritz on that second time you were out there?

24 A. Of Dr. Moritz? He was friendly, cordial.

25 Q. How about Don Sharp?

1 A. Professional.

2 Q. What was next time that you were out at the site?

3 A. The only other occasion I've had to be out  
4 there -- and this -- this may have been described in your  
5 documentation of a city vehicle that kind of came through  
6 the property and left. I know that I had occasion to do  
7 that once, but based on the date that was provided, I  
8 couldn't tell you. But I do know that on one other  
9 occasion, this one I'm describing now, I was asked to just  
10 go see, probably by Don or Danis, if there was activity at  
11 the site, if, you know, Dr. Moritz was coming applying  
12 with the stop work order, and I took a spin through the  
13 ends of Jerome Drive. I don't believe I entered the  
14 property on that particular occasion, and didn't see  
15 anything to warrant stopping so I didn't.

16 Q. Do you know the date?

17 A. I really don't. It's going to be after the 7th  
18 of February.

19 Q. And on that third time that you were out at the  
20 site, did you go down Jerome Drive and then return on  
21 Jerome Drive?

22 A. Yes.

23 Q. And you circled at the end?

24 A. Yes.

25 Q. Did you receive permission to go onto Jerome

1 Drive from any of the adjoining Jerome Drive property  
2 owners?

3 A. No, I did not.

4 Q. How about from Bill Moritz, did you receive  
5 permission from him to go onto his property?

6 A. No, I did not.

7 Q. Did you go through the fence areas at all that  
8 day?

9 A. On this occasion, I believe I did not drive onto  
10 the property.

11 Q. Did you have any inspection warrant on that day?

12 A. No.

13 Q. I'm going to show you what I will mark as the  
14 next exhibit in order, but I'm not certain of the number.

15 Do you have an idea of what the next number is?

16 MS. FOSTER: I might. I believe 86 was the last  
17 one. Oh, I'm sorry, no, because I see an 89 here.

18 MR. SIMPSON: You know what --

19 MS. FOSTER: It looks like 89 is the last one I  
20 have from the Means deposition.

21 MR. SIMPSON: Yeah, 89 was the last one.

22 MS. FOSTER: So this would be 90.

23 (Exhibit 90 marked)

24 BY MR. SIMPSON:

25 Q. I'm going to show you what I will mark as



1 Exhibit 90.

2 A. Okay. Thank you.

3 Q. Which is an e-mail dated June 4, 2008, from Bob  
4 Manis to Tommy Borobia, B-o-r-o-b-i-a, Frank Castaleneto  
5 and Patty Brindle. Do you see that?

6 A. I do.

7 Q. Did you ever get a copy of this particular  
8 e-mail?

9 A. I've never seen this e-mail before today.

10 Q. Were you ever instructed to casually go by the  
11 Moritz property?

12 A. No.

13 Q. Do you know what is meant by the phrase "casually  
14 go by the Moritz property"?

15 A. I don't.

16 Q. Other than those three visits to the Moritz  
17 property, have you been out there any other times?

18 A. I have not.

19 Q. What other conversations have you had with Bill  
20 Moritz other than what you've described?

21 A. I don't believe we've had any other  
22 conversations.

23 Q. Have you had any further involvement in  
24 enforcement activities as to the Moritz property other  
25 than what you've described already?

1 A. I have not.

2 Q. Do you know what was the difference in elevation  
3 between the surface of the eastern end of Jerome Drive and  
4 the area of the ephemeral stream located on the  
5 southwestern -- southeastern, rather, corner of the Moritz  
6 property when you went out there?

7 A. I do not.

8 Q. Do you know what it is today?

9 A. I don't.

10 Q. Does the city of Poway have a practice of sharing  
11 its stop work orders with the Regional Water Quality  
12 Control Board?

13 A. If it is a stop work notice for a violation that  
14 is determined to be -- yes, NPD, yes, National Pollutant  
15 Discharge elimination system related, then, yes, they  
16 would be sent to the Regional Water Quality Control Board.

17 Q. Sir, I'm going to show you what's been marked as  
18 Exhibit 52. Have you ever seen this drawing before?

19 A. No, I've not.

20 Q. You hadn't any involvement in the plans for  
21 reconstruction of the stream?

22 A. I have not.

23 Q. Let me take a little break here.

24 MS. FOSTER: Okay.

25 THE WITNESS: Okay.

1 MR. SIMPSON: Let's go off the record if we  
2 could.

3 (Recess)

4 EXAMINATION

5 BY MS. FOSTER:

6 Q. Dave, on either of the occasions where you were  
7 at the property, did you notice any vertical cuts on the  
8 property at that time?

9 A. No.

10 MS. FOSTER: Thanks. That's my only question.

11 MR. SIMPSON: I appreciate your time.

12 I propose that we have Mr. Rizzuto sign the  
13 transcript under the penalty of perjury, waiving the  
14 requirement of any notary; that he do so within 30 days of  
15 presentation of the transcript to him; the transcript can  
16 be mailed directly to him at the city hall here at this  
17 address with an envelope self-addressed to me; I'll  
18 maintain custody of the original; if for any reason the  
19 original shall remain unsigned beyond the 30-day period, a  
20 certified copy can be used for all purposes that the  
21 original could be used. Okay?

22 MS. FOSTER: So stipulated.

23 (The deposition concluded at 10:02 a.m.)

24 \* \* \*

25

1                   DECLARATION UNDER PENALTY OF PERJURY

2

3                   I, DAVID RIZZUTO, do hereby certify under penalty

4   of perjury that I have read the foregoing transcript of my

5   deposition taken on January 22, 2009; that I have made

6   such corrections as appear noted herein in ink, initialed

7   by me; that my testimony as contained herein, as

8   corrected, is true and correct.

9

10                  Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2009, at

11   \_\_\_\_\_, California.

12

13

14

15

16                   \_\_\_\_\_

17                   DAVID RIZZUTO

18

19

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25

REPORTER'S CERTIFICATION

I, Diane M. Stockton, a Certified Shorthand  
Reporter in and for the State of California, do hereby  
certify:

That the foregoing witness was by me duly sworn;  
that the deposition was then taken before me at the time  
and place herein set forth; that the testimony and  
proceedings were reported stenographically by me and later  
transcribed into typewriting under my direction; that the  
foregoing is a true record of the testimony and  
proceedings taken at that time.

IN WITNESS WHEREOF, I have subscribed my name  
this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Diane M. Stockton, CSR No. 11085





|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: center;">1</p> <p style="text-align: center;">SUPERIOR COURT OF THE STATE OF CALIFORNIA<br/>COUNTY OF SAN DIEGO - CENTRAL DIVISION</p> <p>CITY OF POWAY, a municipal<br/>corporation, Plaintiff,<br/>vs. Case No. 37-2008-00088427-<br/>CU-MC-CTL</p> <p>BILL MORITZ and LORI C.<br/>MORITZ, individuals; and<br/>DOES 1 through 10, inclusive,<br/>Defendants.</p> <p style="text-align: center;">DEPOSITION OF<br/>CHRISTOPHER MEANS</p> <p style="text-align: center;">January 16, 2009<br/>10:00 a.m.</p> <p style="text-align: center;">9174 Sky Park Court, Suite 100<br/>San Diego, California</p> <p style="text-align: center;">Reported by Tamara L. Espino, CSR No. 9494</p>                                                                                                                                                                                                                  | <p style="text-align: center;">3</p> <p style="text-align: center;">INDEX OF EXAMINATION</p> <p>1 WITNESS: Christopher Means</p> <p>2</p> <p>3</p> <p>4</p> <p>5 EXAMINATION PAGE</p> <p>6 By Mr. Simpson 7</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <p style="text-align: center;">2</p> <p>1 APPEARANCES OF COUNSEL</p> <p>2</p> <p>3 For Plaintiff:</p> <p>4 MCDOUGAL, LOVE, ECKIS, SMITH,<br/>BOEHMER &amp; FOLEY</p> <p>5 LISA A. FOSTER, ESQ.</p> <p>6 460 North Magnolia, Drawer 1466<br/>El Cajon, California 92022-1466<br/>(619) 440-4444<br/>lfooster@mclex.com</p> <p>7</p> <p>8 For Dr. and Mrs. Moritz:</p> <p>9 THE SIMPSON LAW FIRM</p> <p>10 DOUGLAS J. SIMPSON, ESQ.</p> <p>11 1224 10th Street, Suite 201<br/>Coronado, California 92118<br/>(619) 437-6900<br/>dsimpson@simpsonlawfirm.com</p> <p>12</p> <p>13 For State Water Resources Control Board:</p> <p>14 CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY</p> <p>15 JORGE A. LEON, ESQ.</p> <p>16 1001 I Street, P.O. Box 100<br/>Sacramento, California 95812<br/>(916) 341-5180<br/>jleon@waterboards.ca.gov</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> | <p style="text-align: center;">4</p> <p style="text-align: center;">INDEX TO EXHIBITS</p> <p>1</p> <p>2 EXHIBITS MARKED</p> <p>3 52 Artist's rendering of the Moritz residence 18</p> <p>4</p> <p>5 53 Photo taken by Kelly Fisher 34</p> <p>6</p> <p>7 54 18 photos labeled Poway Fire 2007 37</p> <p>8</p> <p>9 55 Stop Work Notice, 2/7/08 38</p> <p>10</p> <p>11 56 Stop Work Notice, 2/8/08 40</p> <p>12</p> <p>13 57 Conversation Confirmer, March 21, '08 47</p> <p>14</p> <p>15 58 Facility Inspection Report 6/9/08 48<br/>(incomplete copy)</p> <p>16</p> <p>17 59 Facility Inspection Report 6/9/08 49</p> <p>18</p> <p>19 60 Tentative Cleanup and Abatement Order 51<br/>No. R9-2008-0152</p> <p>20</p> <p>21 61 Diagram of property with handwritten notations 58</p> <p>22</p> <p>23 62 Department of Fish and Game Notification of Lake or Streambed Alteration, 5/14/08 79</p> <p>24</p> <p>25</p> |

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| 2  |                           |                                        | 2  | FRIDAY, JANUARY 16, 2009; 10:00 A.M.                |                                                         |
| 3  | EXHIBIT                   | MARKED                                 | 3  |                                                     |                                                         |
| 4  |                           |                                        | 4  | CHRISTOPHER MEANS,                                  |                                                         |
| 5  | 71                        | October 25, 2007 letter re: 96         | 5  | having been first duly sworn, testifies as follows: |                                                         |
| 6  |                           | Authorization to use Conditional       | 6  |                                                     |                                                         |
| 7  |                           | Waiver for Discharges of               | 7  | EXAMINATION                                         |                                                         |
| 8  |                           | Emergency/Disaster Related Wastes      | 8  | BY MR. SIMPSON:                                     |                                                         |
| 9  |                           |                                        | 9  | Q                                                   | Sir, will you tell us your name, please, and            |
| 10 | 72                        | 16 Jun 08 letter to Mr. Means from 102 | 10 |                                                     | spell your last name for the record.                    |
| 11 |                           | Dr. Moritz                             | 11 | A                                                   | My name is Christopher Means, and my last               |
| 12 |                           |                                        | 12 |                                                     | name is spelled M-a -- M-e-a-n-s.                       |
| 13 | 73                        | Excerpt from state document re: 102    | 13 | MR. SIMPSON: Off the record a second.               |                                                         |
| 14 |                           | Selection of Appropriate Enforcement   | 14 | (Off the record)                                    |                                                         |
| 15 |                           | Action                                 | 15 | BY MR. SIMPSON:                                     |                                                         |
| 16 |                           |                                        | 16 | Q                                                   | Sir, as you're aware, you have just been                |
| 17 | 74                        | Enlarged photograph 108                | 17 |                                                     | sworn in. And that means the penalty of perjury applies |
| 18 |                           |                                        | 18 |                                                     | to testimony you're giving us today. Do you understand  |
| 19 | 75                        | Enlarged photograph 112                | 19 |                                                     | that?                                                   |
| 20 | 76                        | Enlarged photograph 113                | 20 | A                                                   | Yes.                                                    |
| 21 | 77                        | Enlarged photograph 115                | 21 | Q                                                   | This testimony has the same force and effect            |
| 22 |                           |                                        | 22 |                                                     | as if you were testifying before a judge and jury. Do   |
| 23 | 78                        | Enlarged photograph 115                | 23 |                                                     | you understand?                                         |
| 24 |                           |                                        | 24 | A                                                   | Yes.                                                    |
| 25 |                           |                                        | 25 | Q                                                   | We will have a transcript prepared that                 |

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| <p style="text-align: center;">9</p> <p>1 contains everything that's been said here today on the<br/> 2 record today, and you'll have the opportunity to review<br/> 3 that and then to make changes to your answers. However,<br/> 4 if you make changes of a substantive answer, a no to a<br/> 5 yes, a yes to a no, for example, we could comment on<br/> 6 that and that could affect your credibility. Do you<br/> 7 understand?<br/> 8 A Yes.<br/> 9 Q Any reason we can't have your best testimony<br/> 10 today?<br/> 11 A No.<br/> 12 Q From time to time I might ask you a question<br/> 13 that you feel that you don't know the complete answer,<br/> 14 but I'm entitled to such information as you have<br/> 15 available that addresses the question. Okay?<br/> 16 A Yes.<br/> 17 Q This comes up sometimes in a situation where<br/> 18 I ask for a specific day or date, and you don't know the<br/> 19 specific day or date but you might know the week, the<br/> 20 month or the season. I'm entitled to get the<br/> 21 information that you have available. Okay?<br/> 22 A Okay.<br/> 23 Q This also sometimes comes up in the situation<br/> 24 where I ask for sizes of things or areas. And I'm<br/> 25 entitled to such information as you have, but I don't</p> | <p style="text-align: center;">11</p> <p>1 Q Where are you employed?<br/> 2 A I'm employed with the California Regional<br/> 3 Water Quality Control Board, San Diego region.<br/> 4 Q And that frequently goes by the acronym<br/> 5 RWQCB?<br/> 6 A Yes.<br/> 7 Q How long have you been there?<br/> 8 A I started my employment June 2000. So almost<br/> 9 coming up on nine years.<br/> 10 Q What is your current position?<br/> 11 A I'm an environmental scientist with the<br/> 12 central watershed protection unit.<br/> 13 Q How long have you held that position?<br/> 14 A Since -- I've held the position of<br/> 15 environmental scientist since I was hired here at the<br/> 16 state board, and I've been with the central watershed<br/> 17 protection unit for two years.<br/> 18 Q Before you were with the central watershed<br/> 19 protection unit, what was your position within the<br/> 20 RWQCB?<br/> 21 A I originally was hired as an environmental<br/> 22 scientist in the storm water unit. I performed my<br/> 23 duties there until we reorganized, and then I was an<br/> 24 environmental scientist with the northern watershed<br/> 25 protection unit. Again, we reorganized, I became an</p>                                                  |
| <p style="text-align: center;">10</p> <p>1 want you to speculate or guess.<br/> 2 I often explain the difference between<br/> 3 speculations -- speculating and guessing by example. As<br/> 4 an example, you can estimate the size of the table in<br/> 5 front of you here because you have some reason to<br/> 6 perceive its size, some personal knowledge. But as to<br/> 7 the size of the table that's in my office that you've<br/> 8 never seen, you have no information and that would be<br/> 9 pure speculation. Do you understand the difference<br/> 10 between estimates and speculation on the other hand?<br/> 11 A Yes.<br/> 12 Q As you've been doing, we need to have oral<br/> 13 responses, those that we can hear rather than head nods,<br/> 14 gestures, that kind of thing. Okay?<br/> 15 A Okay.<br/> 16 Q From time to time counsel might object to a<br/> 17 question that I ask, but you're required to give an<br/> 18 answer if you understand the question. Okay?<br/> 19 A Yes.<br/> 20 Q If you don't understand a question, please<br/> 21 let me know and I'll try my best to rephrase it in a way<br/> 22 that makes some sense or --<br/> 23 A Okay.<br/> 24 Q Sir, are you currently employed?<br/> 25 A Yes.</p>                                   | <p style="text-align: center;">12</p> <p>1 environmental scientist with the southern watershed<br/> 2 protection unit. And then a couple years ago, when I<br/> 3 accepted the job of transportation liaison to SANDAG and<br/> 4 Caltrans, I joined the central watershed protection<br/> 5 unit.<br/> 6 Q Describe for me, if you would, your job<br/> 7 responsibilities working for the RWQCB currently.<br/> 8 A Currently I am working on all aspects of<br/> 9 environmental permitting for large transportation<br/> 10 projects included in the SANDAG and Caltrans early<br/> 11 action plan. A portion of my -- I'm contracted with<br/> 12 SANDAG and Caltrans to expedite environmental permitting<br/> 13 for a number of large transportation projects that are<br/> 14 being funded by the TransNet II tax. Additionally, when<br/> 15 there isn't contract work for me, I perform whatever<br/> 16 watershed protection duties are necessary as my<br/> 17 supervisor sees fit.<br/> 18 Q Who is your supervisor?<br/> 19 A My supervisor is Chiara Clemente.<br/> 20 Q And Chiara is C-h-i-a-r-a?<br/> 21 A Yes.<br/> 22 Q And is Clemente C-l-e-m-e --<br/> 23 A M-e-n-t-e. Sorry.<br/> 24 MR. SIMPSON: You got both of us?<br/> 25 THE REPORTER: (Nods head.)</p> |

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| <p style="text-align: center;">13</p> <p>1 THE WITNESS: Sorry.</p> <p>2 BY MR. SIMPSON:</p> <p>3 Q What is her job title, if you know?</p> <p>4 A Senior environmental scientist.</p> <p>5 Q And to whom does she report, if you know?</p> <p>6 A She would report to the branch manager of the</p> <p>7 watershed protection branch, which is David Barker.</p> <p>8 Q And who is his supervisor, if you know?</p> <p>9 A He would report to the assistant executive</p> <p>10 officer, which is Michael McCann.</p> <p>11 Q M, small c, capital C-a-n-n?</p> <p>12 A Yes.</p> <p>13 Q And to whom does he report?</p> <p>14 A He would report to the executive officer of</p> <p>15 the regional board, John Robertus.</p> <p>16 Q And to whom does John Robertus report?</p> <p>17 A I imagine he would report to the executive</p> <p>18 director of the state water resources control board.</p> <p>19 MR. LEON: He actually reports to the board</p> <p>20 itself.</p> <p>21 THE WITNESS: To the board.</p> <p>22 BY MR. SIMPSON:</p> <p>23 Q Is it your understanding that he reports to</p> <p>24 the Regional Water Quality Control Board for the San</p> <p>25 Diego region?</p> | <p style="text-align: center;">15</p> <p>1 Q How about orders of the regional board?</p> <p>2 A Yes.</p> <p>3 Q How about provisions of the basin plan for</p> <p>4 the San Diego region?</p> <p>5 A Yes.</p> <p>6 Q Is it your understanding that as an</p> <p>7 enforcement officer for the Regional Water Quality</p> <p>8 Control Board here in San Diego that the board itself is</p> <p>9 required to conform its conduct and orders to the</p> <p>10 provision of the California water code?</p> <p>11 MR. LEON: The question is somewhat</p> <p>12 ambiguous. I'm not trying to interrupt or object, but</p> <p>13 just to try to get clarity as to who it is that you're</p> <p>14 asking the question of, whether he's the enforcement</p> <p>15 officer or something else is an enforcement officer and</p> <p>16 what that person's duty is, as you said.</p> <p>17 BY MR. SIMPSON:</p> <p>18 Q Is it your personal understanding as an</p> <p>19 enforcement officer for RWQCB San Diego region that the</p> <p>20 regional board is required to follow provisions of the</p> <p>21 water code?</p> <p>22 A Yes.</p> <p>23 Q When did you first become aware of anything</p> <p>24 having to do with my clients, Bill and Lori Moritz?</p> <p>25 A In the month of May 2008, I was forwarded a</p> |
| <p style="text-align: center;">14</p> <p>1 A Yes.</p> <p>2 Q As its executive officer?</p> <p>3 A Yes.</p> <p>4 Q The typical, if there is such a thing,</p> <p>5 cleanup and abatement order that's issued under water</p> <p>6 code section 13304, are they -- describe if you would</p> <p>7 the life of a typical cleanup and abatement order.</p> <p>8 A The life of -- could you be more --</p> <p>9 Q Sure.</p> <p>10 A -- clear?</p> <p>11 Q Is part of your job duty to enforce water</p> <p>12 code provisions?</p> <p>13 A Yes.</p> <p>14 Q What else do you do as part of your job</p> <p>15 duties?</p> <p>16 A As I described before, I currently am aiding</p> <p>17 SANDAG and Caltrans in environmental permitting review</p> <p>18 of large transportation projects.</p> <p>19 Q Bad question from me.</p> <p>20 What other pieces of legislation or</p> <p>21 regulations or orders do you enforce?</p> <p>22 A We enforce the Porter-Cologne Water Quality</p> <p>23 Control Act, the water code, and in regards to the</p> <p>24 issuance of 401, water quality certifications, we</p> <p>25 enforce Section 401 of the clean water act.</p>                          | <p style="text-align: center;">16</p> <p>1 complaint from the city of Poway. My supervisor, Chiara</p> <p>2 Clemente, forwarded me a complaint regarding your client</p> <p>3 and asked that I look into it.</p> <p>4 Q From whom did the complaint come, if you</p> <p>5 know?</p> <p>6 A I believe it was Danis Bechter, staff person</p> <p>7 with the city of Poway.</p> <p>8 Q And that's D-a-n-i-s, for Danis, and Bechter</p> <p>9 is B-e-c-h-t-e-r.</p> <p>10 A I believe so.</p> <p>11 Q Was the complaint in writing?</p> <p>12 A It was by e-mail.</p> <p>13 Q And we're talking not about a complaint such</p> <p>14 as a legal document that's filed in court, but a</p> <p>15 complaint as far as a concern about water code</p> <p>16 violation?</p> <p>17 A Yes.</p> <p>18 Q What did he say to you?</p> <p>19 A The e-mail said that Dr. Moritz had been</p> <p>20 impacting an ephemeral stream running through his</p> <p>21 property without proper grading permits.</p> <p>22 Q Anything else?</p> <p>23 A There was contained in the PDF that was</p> <p>24 provided, I believe, some enforcement -- well, some stop</p> <p>25 work orders from the city of Poway, a conversation memo,</p>                                                                                               |